

REMARKS/ARGUMENTS

Claims 48-54 are pending in this application. The first paragraph of the Specification has been amended to indicate the foreign priority claims in the International Application, of which Applicants also submits a copy of the first page of the International Publication. Applicants assert that the filing of the claim for foreign priority is timely under 37 CFR 1.55 (a)(1ii) because the claim for priority was within the time limit set forth in PCT Rule 17. In addition to the amendment, Applicants submit in an accompany paper a Supplemental Application Data Sheet and certified copies of the foreign applications to complete the foreign priority claim. Thus, Applicants assert that all requirements under 37 CFR 1.55 have been met to entitle the present application the benefit of foreign priority under 35 U.S.C. 119. Applicants assert that no new matter has been added.

The issues outstanding in this application are as follows:

- Claim 53 has been rejected under 35 U.S.C. § 112 second paragraph as being indefinite.
- Claims 48-52 and 54 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Hayek (US 6,310,090).
- Claim 53 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayek (US 6,310,090).

I. 35 U.S.C. § 112, second paragraph

Claim 53 was rejected under 35 U.S.C. § 112, second paragraph as being indefinite. The Action states that the term “about” is a relative term and is not defined by the claim and the specification does not provide a standard for ascertaining the requisite degree. Applicants respectfully traverse.

The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C., second paragraph. *Seattle Box Col, v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). The MPEP § 2173.05(b) further states that acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.

Applicants refer the Examiner to the specification, page 7, lines 11-24, which clearly provides a standard for determining the amount of vitamin E. Since the specification clearly provides a standard that is well known and used in the art to determine the amount of vitamin E, Applicants assert that the term “about” is definite. Thus, Applicants respectfully request that the rejection be withdrawn.

II. 35 U.S.C. § 102(e)

Claims 48-52 and 54 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hayek (US 6,310,090). The Action states that Hayek teaches a process for feeding a companion animal, such as a dog, a diet containing an effective amount of a combination of antioxidants to enhance immune response and improve overall health of the animal. Applicants respectfully traverse.

Applicants assert that this rejection is now moot in light of the completed foreign priority claim. The International Application claims priority to a foreign application which was filed on January 29, 1999. In order to complete the foreign priority claim, Applicants submit in a separate document the certified foreign applications in addition to a Supplemental Application Data Sheet to complete the foreign priority claim.

Applicants assert that the foreign application (GB9902051.3) filed on January 29, 1999 provides adequate written description to support pending claims 48-52 and 54. Thus, the effective filing date of the present application is January 29, 1999. Since this application is prior to the earliest filing date of Hayek, Applicants assert that this rejection is improper and respectfully request that the rejection be withdrawn.

III. 35 U.S.C. § 103(a)

Claim 53 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayek (US 6,310,090). The Action states that Hayek teaches a pet food for enhancing immune response in a companion animal, in which the pet food contains an effective amount of a combination of vitamin E, lutein and beta-carotene. Applicants respectfully traverse.

Applicants assert that this rejection is now moot in light of the completed foreign priority claim. The International Application claims priority to a foreign application which was filed on January 29, 1999. In order to complete the foreign priority claim, Applicants submit in a separate document the certified foreign applications in addition to a Supplemental Application Data Sheet to complete the foreign priority claim.

Applicants assert that the foreign application (GB9902051.3) filed on January 29, 1999 provides adequate written description to support pending claim 53. Thus, since this application is prior to the earliest filing date of Hayek, Applicants assert that this rejection is improper and respectfully request that the rejection be withdrawn.

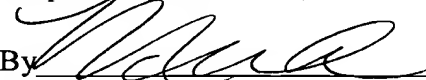
Conclusion

Claims 48-54 are pending in this application. Applicants assert that the effective filing date of the present application is January 29, 1999. Thus, the prior art rejections are moot and Applicants respectfully request that the rejections be removed and that the interference proceedings be declared.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. 09908703 from which the undersigned is authorized to draw. If there are any outstanding issues, the Examiner is requested to contact the undersigned for a quick resolution.

Dated: May 7, 2003

Respectfully submitted,

By 

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